



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

**Mr. T. M. Trimble
First Assistant
State Superintendent
Austin, Texas**

Dear Sir:

**Opinion No. O-1324
Re: Finality of finding of "un-
usual or extraordinary con-
ditions" by State Department
of Education.**

**We are in receipt of your letter of August 31, 1939,
in which the following question, concerning the Equalization
Law of the 45th Legislature, is submitted for our opinion:**

**"Does the State Auditor have discretion
in the matter of determining an unusual con-
dition or is that to be determined by the
State Superintendent and approved by the
State Board of Education?"**

**Sections 4 and 21 of S. B. 349, ch. 475, Acts 45th
Legislature, p. 1271, Regular Session, as amended by H. B. 133,
ch. 60, (2d) C. S., 45th Legislature, p. 1972, read as follows:**

**"Section 4. Teacher-Pupil Load. State
aid under provisions of this Act shall be
allotted upon the basis of one teacher for
any number of scholastics from twenty (20)
to thirty-five (35) and one additional
teacher for each additional thirty (30)
scholastics, or fractional part thereof,
residing in the district. It is expressly pro-
vided that in the event pupils are transferred
into the district the excess fractional part
thereof shall not be less than two (2) scho-
lastics. The basis for calculation shall be
the net scholastic enumeration of white or
colored race, as the case may be, including
the transfers into the district, and**

excluding the transfers out of the district for the current year and there shall be deducted all scholastics who have completed the course of study in their home school, as authorized by the County Board of Trustees, provided that where unusual or extraordinary conditions cause an actual increase in enrollment, an adjustment as to the number of teachers may be made by the State Superintendent with the approval of the State Board of Education not to exceed the teacher-pupil load provided herein; provided further that under no conditions shall aid be granted any district in excess of the number of teachers actually contracted for and employed.

"Section 21. The State Auditor's office is hereby directed to audit all applications for aid after same have been passed on by the Director of Equalization and when such application has been approved by said director, it shall then be the duty of the State Auditor to approve, modify or reject such application before same is presented to the State Board of Education by the Director of Equalization."

A careful reading of the act as a whole discloses that the primary burden of administering the act is placed upon the State Department of Education and in particular upon the State Superintendent, Director of Equalization and State Board of Education. The duty of the State Auditor's office is to audit all applications after they have been approved by the Director of Equalization. The term "audit" in its ordinary sense means to examine, check or verify accounts. When the Auditor is directed by this act to "audit" the applications, does it mean that the entire administration of the act is to be placed under his control or that he is given an unrestricted veto power over discretionary findings made by the State Superintendent and State Board of Education? We do not think the authority to approve, modify or reject applications was intended to go to such extent.

Under Section 4, adjustment as to the number of teachers may be made by the State Superintendent with the approval of the State Board of Education "where unusual or extraordinary conditions cause an actual increase in enrollment." Whether given circumstances constitute "unusual or extraordinary conditions" sufficient to justify an adjustment in the number of

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teachers in a school is highly discretionary and is vested in a body familiar with the problems confronted in conducting an efficient system of schools. When this discretion has been exercised and the finding made we do not think it was contemplated that the Auditor should be authorized to set it aside and substitute therefor his own discretion and a different finding.

It is our opinion that the State Auditor's office does not have discretion in the matter of determining an unusual condition under the Qualification Law of the 45th Legislature, but such discretion is vested in the State Superintendent and State Board of Education.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Cecil C. Cammack
Assistant

CCC:RA:ba